

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SHAUN CHAPPELL,

Plaintiff,

v.

LIBERTY MUTUAL PERSONAL  
INSURANCE COMPANY,

Defendant.

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CIVIL ACTION FILE  
No.:

**DEFENDANT LIBERTY MUTUAL PERSONAL INSURANCE  
COMPANY’S MOTION TO DISMISS FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF MAY BE GRANTED OR,  
ALTERNATIVELY, FOR JUDGMENT ON THE PLEADINGS**

Because the face of the Plaintiff’s Complaint establishes that it fails to state valid claims, Liberty Mutual Personal Insurance Company (“LMPIC”), by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(6) and NDGa. Local Rule 7.1, moves to dismiss the Plaintiff’s Complaint for failure to state a claim upon which relief can be granted.

Plaintiff’s “Complaint for Damages Pursuant to OCGA 40-6-273, OCGA 33-6-30, OCGA 33-6-33, OCGA 33-6-34, OCGA 51-12-5.1(B)” (“Complaint”) asserts three causes of action against LMPIC, all of which fail as a matter of law. First, Plaintiff’s claim pursuant to O.C.G.A. § 40-6-273, the Duty to Report Accident

Resulting in Injury, Death, or Property Damage, is without merit because that statute imposes no duty on LMPIC to report an accident. Nor does it create a private right of action for recovery of monetary damages. Second, the Plaintiff's claims pursuant O.C.G.A. § 33-6-30, 33-6-33 and 33-6-34 (which are all parts of the Unfair Claims Settlement Practices Act) fail as a matter of law because Plaintiff lacks standing to assert such claims because the Unfair Claims Settlement Practices Act explicitly prohibits a private right of action. See, O.C.G.A. § 33-6-7. Because Plaintiff's two underlying claims fail as a matter of law, there can be no recovery of punitive damages.

Alternatively, Plaintiff's claims against LPMIC are an impermissible direct action against a purported tortfeasor's liability insurance carrier and must be dismissed under well-settled Georgia law.

For these reasons, as more fully set forth in LMPIC's supporting brief, LPMIC prays that the Court grant its Motion to Dismiss the Plaintiff's claims with prejudice.

Respectfully submitted this 3<sup>rd</sup> day of January 2023.

ISENBERG & HEWITT, P.C.

/s/ Hilary W. Hunter  
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**Attorneys for Defendant**

**LOCAL RULE 7.1 CERTIFICATE**

The undersigned counsel hereby certifies that this pleading was prepared with one of the font and point selections approved by the Court in L.R. 5.1.C. Specifically, Times New Roman was used in 14 point.

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SHAUN CHAPPELL,	)	
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Plaintiff,	)	CIVIL ACTION FILE
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LIBERTY MUTUAL PERSONAL	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I electronically filed **DEFENDANT LIBERTY MUTUAL PERSONAL INSURANCE COMPANY'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED OR, ALTERNATIVELY, FOR JUDGMENT ON THE PLEADINGS** with the Clerk of Court via the CM/ECF system, which will automatically send e-mail notification of such filing to all parties to this matter, and also served a copy of the within and foregoing pleading to all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed as follows:

Shaun Chappell  
6087 Camden Forrest Drive  
Riverdale, GA 30296

This 3<sup>rd</sup> day of January 2023.

ISENBERG & HEWITT, P.C.

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